

PUBLIC

RECEIVED

NOV 26 2014

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

Copyright Royalty Board

In the Matter of

DETERMINATION OF ROYALTY RATES
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (WEB IV)

Docket No. 14-CRB-0001-WR
(2016-2010)

**iHEARTMEDIA'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL
SOUNDEXCHANGE TO PRODUCE DOCUMENTS**

iHeartMedia has demonstrated the central relevance of (1) internal Warner Music Inc. documents showing Warner's valuation of the Warner-iHeartMedia agreement and (2) documents regarding the promotional effect of webcasting services from ten specific individuals at each of the three major record labels in charge of promotion. SoundExchange's opposition — largely grounded in vague "burden" claims and arguments of irrelevance belied by its own pre-filed testimony and unsupported by law — does not come close to refuting iHeartMedia's proof that both categories of documents are "directly related to" SoundExchange's written direct statements and are thus properly discoverable under 37 C.F.R. § 351.5(b)(1).

I. SOUNDEXCHANGE SHOULD BE COMPELLED TO PRODUCE INTERNAL WARNER DOCUMENTS RELATED TO THE WARNER-iHEARTMEDIA AGREEMENT THAT ARE RESPONSIVE TO RFP NOS. 7, 37, 38, AND 39

Of central importance to this proceeding is the Warner-iHeartMedia agreement. This agreement — the first between a major broadcaster and a major record label — is precisely the kind of agreement that is most persuasive in determining the rate a willing buyer would pay and

PUBLIC

a willing seller would accept.¹ For that reason, both sides have extensively addressed it in their pre-filed testimony. *See* Mot. at 2-3 (citing testimony). iHeartMedia's expert witnesses, Professors Daniel Fischel and Douglas Lichtman, have demonstrated that this agreement reflects a market rate of \$0.0005 per performance, based on the parties' understanding at the time of the agreement that the statutory rate (\$0.0025 for 2015) would apply to the pre-agreement level of performances, or "spins," of Warner's sound recordings, but that a different rate (\$0.0005) would apply to the *additional* spins the parties expected the agreement to provide to Warner. *See* Fischel/Lichtman ¶¶ 31-55. SoundExchange also addresses this agreement and has submitted pre-filed testimony from a Warner in-house lawyer, Ron Wilcox, about what Warner "believed" and "perceived" — at the time it signed the agreement — it would obtain from the agreement. Wilcox at 8, 9, 12. SoundExchange's expert, Professor Daniel Rubinfeld, also extensively analyzes this agreement, asserting that it "confirm[s] the reasonableness of [his] proposed rates" and his proposed "structure of compensation." Rubinfeld ¶¶ 187, 239; *see also id.* ¶¶ 22-25, 84, 139, 150, 162, 176-186, 229-236, App. 1b (discussing and analyzing the Warner-iHeartMedia agreement).

The Warner-iHeartMedia agreement, however, cannot be fully analyzed on its face. Because the contract includes a [REDACTED] its terms cannot be translated into an effective per-performance *rate* without understanding the *quantity* of performances Warner expected to receive under the deal.² Documents exchanged between Warner and iHeartMedia in

¹ *See* Order Denying, Without Prejudice, Motions for Issuance of Subpoenas Filed by Pandora Media, Inc. and the National Association of Broadcasters at 3, Docket No. 14-CRB-0001-WR (2016–2020) (Apr. 3, 2014) (noting the "important evidentiary value of actual marketplace agreements as potential benchmarks in determining the statutory rates") ("*Order Denying Motions for Subpoenas*").

² Although SoundExchange asserts otherwise (at 6), its expert, Professor Rubinfeld, made numerous assumptions about the agreement — not dictated by the "final terms" — in analyzing

PUBLIC

the middle of negotiations show that both sides recognized they were negotiating over — and sought to reach agreement on — [REDACTED]

[REDACTED]³ iHeartMedia has produced *its* internal documents reflecting its contemporaneous expectations of the additional spins — above those Warner could expect to receive without the agreement and as to which Warner had no incentive to depart from the statutory rate.

But even though SoundExchange submitted pre-filed testimony from a Warner lawyer (Mr. Wilcox) about the agreement, its terms, and — in SoundExchange’s words (at 6) — the “specific advantages” that Warner perceived from the agreement, it has refused to provide Warner’s internal documents reflecting its contemporaneous expectations. As iHeartMedia showed — and SoundExchange does not confront directly — Mr. Wilcox expressly testified about what Warner “perceived” and “believed” were the “economic” benefits at the time it signed the agreement.⁴ SoundExchange’s expert, Professor Rubinfeld, likewise attempted to analyze the agreement and claims that it provides support for his rate structure proposal. *See, e.g.,* Rubinfeld ¶¶ 176-187. It is therefore beyond legitimate dispute that internal Warner documents regarding the Warner-iHeartMedia agreement are “directly related” to SoundExchange’s pre-filed testimony. 17 U.S.C. § 803(b)(6)(C)(v); 37 C.F.R. § 351.5(b)(1).

the agreement. *See, e.g.,* Rubinfeld ¶¶ 229-236, Ex. 12, App. 1b (attributing 50 percent of the flat fee to terrestrial radio plays and including \$7.5 million in advertising value, but excluding another \$2.5 million of such value).

³ Email from R. Wiesenthal to R. Pittman (May 2, 2013) (attached as Ex. I).

⁴ Wilcox at 8, 9, 12. SoundExchange’s assertion (at 14-15) that Mr. Wilcox’s discussion of the agreement simply “give context” to an agreement that SoundExchange seeks to “distinguish[]” does not make the internal Warner documents that reflect Warner’s perceptions and beliefs any less directly relevant. iHeartMedia is entitled to those documents to test Mr. Wilcox’s assertions about Warner’s expectations regarding the benefits that would flow from the agreement.

PUBLIC

That should be sufficient to resolve this motion and to require SoundExchange to produce Warner's internal documents, just as iHeartMedia has produced its internal documents related to that agreement in response to SoundExchange's discovery requests.

SoundExchange effectively ignores the controlling standard for discovery and makes, instead, various merits and burden arguments that should not be credited.

First, SoundExchange notes that it withheld the internal Warner documents from its expert, Professor Rubinfeld, so that he gave his opinion on the effective, per-performance rate under the agreement without the benefit of Warner's expectations and bases for agreeing to the terms of the contract. Opp. at 6. That rather astonishing concession changes nothing: as the Judges have previously ruled, documents a party chooses to withhold from its expert "may be as 'directly related'" as information considered and may be sought in discovery.⁵ That SoundExchange and Professor Rubinfeld have attempted to crop the picture in ways to maneuver around these damaging documents is not a legitimate reason to deny discovery of the documents they are seeking to avoid.

Second, SoundExchange also attempts to draw a distinction between documents that Warner shared with iHeartMedia and Warner's own internal deliberation documents. See Opp. at 15. Both categories of documents are discoverable, and SoundExchange offers no cogent reason (much less authority) to hold otherwise. Documents directly related to this centrally important agreement, its terms, and the additional performances and expected advantages Warner anticipated under the agreement — whether internal to Warner or provided to iHeartMedia during the negotiations — shed light on the benefits and detriments the contracting parties were expecting and willing to take. Such documents are therefore direct evidence of the

⁵ *Order Denying Motions for Subpoenas* at 5-6.

PUBLIC

transaction agreed upon by a willing buyer and a willing seller. SoundExchange, moreover, does not even believe in the distinction it advances here: SoundExchange has requested from iHeartMedia the very same documents — both internal and shared externally — regarding the agreement that SoundExchange seeks to withhold.⁶ As both sides' discovery requests demonstrate, all parties agree that these documents are direct evidence of the compensation a seller (Warner) was willing to accept for additional performances of its artists' songs that it would not have received under the statutory license. To make a well-grounded decision regarding the significance of the Warner-iHeartMedia agreement, the Judges should consider (and have access to) the contemporaneous, internal views of both sides to that agreement.

SoundExchange also makes a number of arguments going to the merits, contending that the Warner-iHeartMedia agreement is less relevant than the deals for a completely different kind of service (interactive) that its expert, Professor Rubinfeld, also relied on. *See* Opp. at 5-6. This is both untrue and irrelevant for discovery purposes: the ultimate weight to be given to the various agreements both sides have cited in their pre-filed testimony is a matter for the Judges to resolve at trial, not a basis for denying of what both sides have recognized is relevant evidence.

Similarly, SoundExchange argues that contemporaneous evidence of the parties' expectations — their basis for transacting — is somehow irrelevant and — because Professor Rubinfeld says so — only after-the-fact evidence of “performance-to-date under th[e] agreement” in terms of additional spins can be considered. Opp. at 6, 15. This is, again, both wrong⁷ and irrelevant to this motion. There is simply *no law* that supports the notions that

⁶ SoundExchange's own discovery requests broadly sought (among other things) “all documents, communications, projections, presentations, or analyses, concerning or relating to the negotiation of the agreement[.]” SoundExchange Req. for Docs. No. 2 (Mot. at Ex. B).

⁷ The statute requires the statutory license to be set at “the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.” 17 U.S.C.

PUBLIC

documents that may help the Judges understand a deal of central relevance can be withheld in discovery, and SoundExchange has not even attempted to present such authority. Indeed, the authority it cites (at 14 n.2, 16 n.5) is inapt. In one order SoundExchange cites, the Judges compelled SoundExchange to produce “economic and business information considered in reaching” a “licensing agreement[.]”⁸ In another, XM had already produced “financial and strategy documents (also referred to as ‘business case’ documents) for various agreements”⁹ of the type that SoundExchange now refuses to produce here.

SoundExchange also suggests that the Judges — at this early stage of the proceedings and on a discovery motion — should hold that the Warner-iHeartMedia agreement is irrelevant to setting the statutory rate because it [REDACTED] Again, that merits

§ 114(f)(2)(B). In similar circumstances, courts have recognized that such a hypothetical transaction must be assessed *at the time of the transaction*, not based on post-transaction events. For example, in calculating the reasonable royalty for an infringed patent, the court “attempts to ascertain the royalty upon which the parties would have agreed had they successfully negotiated an agreement just before infringement began” and “tries, as best as possible, to recreate the *ex ante* licensing negotiation scenario.” *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1324-25 (Fed. Cir. 2009). Similarly, in valuing a business in the context of a fraudulent transfer claim, courts “reject the use of improper hindsight analysis in valuing a company’s pre-bankruptcy assets.” *In re Iridium Operating LLC*, 373 B.R. 283, 345 (Bankr. S.D.N.Y. 2007). Even the cases that Professor Rubinfeld cites do not authorize an approach that ignores entirely the parties’ expectations at the time of entering a contract. *See* Rubinfeld ¶ 125 n.203.

⁸ Order Granting in Part and Denying in Part the Motion of Digital Media Association and its Member Companies To Compel SoundExchange To Produce Its Satellite Digital Audio Radio Services License Agreements and Related Documents at 1, Docket No. 2005-1 CRB DTRA (Mar. 28, 2006) (“*Order on DiMA Motion To Compel*”). As iHeartMedia explained (at 11 n.7) — and SoundExchange ignores in citing this same decision (at 16 & n.5) — its motion to compel seeks a much narrower set of documents than those the Judges refused to require SoundExchange to produce in that order.

⁹ Order Granting in Part and Denying in Part SoundExchange’s Motion To Compel Sirius and XM To Produce Certain Content Deals, Negotiating Documents, and Internal Analyses of Content Deals at 3, Docket No. 2006-1 CRB DSTRA (May 18, 2007). To the extent the Judges denied further production of those documents, they did so on the ground that the particular requests there — which pertained to 17 agreements — were “nonspecific and overbroad.” *Id.* SoundExchange has made no showing that the requests at issue here, with respect to this one agreement, have that failing.

PUBLIC

argument is wrong¹⁰ and irrelevant to resolving this motion. Both sides have submitted testimony extensively analyzing the Warner-iHeartMedia agreement and addressing its relevance to this case. Exactly what the agreement shows, how it fits with other evidence in the case, and the rate it supports are issues for trial. It would be inappropriate to prevent the discovery of relevant evidence that, as shown above, is directly related to SoundExchange's pre-filed testimony on the theory that it may at some point be found less persuasive than other evidence that is not even now before the Judges.

Finally, SoundExchange claims (at 15-17) that reviewing its internal documents related to a single agreement would be too burdensome. The argument is facially unpersuasive. Any effort required to produce this evidence — which will help the Judges fully understand an agreement centrally relevant to this case by providing the internal, contemporaneous views of both sides to the deal — is effort worth expending. SoundExchange put iHeartMedia to the same burden with its document requests, which iHeartMedia met, including by reviewing those documents for privilege. There is nothing undue about imposing the same burden on SoundExchange.¹¹

¹⁰ The major labels' (and any record label's) share of performances on webcasting services is not set in stone. The Warner-iHeartMedia agreement reveals that labels can — and in the absence of the statutory license, surely would — compete to increase their artists' share of performances by agreeing to accept a lower per-performance rate. Focusing on the fact that a webcaster [REDACTED] thus misses the point: a label unwilling to respond to its competitor's offer of a lower price will see its share decline. Again, the Judges need not resolve this dispute in the context of this motion to compel. But the Judges should not preclude iHeartMedia from obtaining the documents it will need to make this argument in due course

¹¹ SoundExchange's "compromise" proposal (at 16-17) is not a serious offer. SoundExchange suggests that it should have to review only those documents that happen to be in the files of its in-house lawyer from the month before the agreement was signed. Obviously, that omits most of the relevant evidence, which is held by business people and for a period far longer than a single month before the contract was signed. Indeed, SoundExchange's "compromise" excludes the period (Spring and Summer 2013) when the parties negotiated the core structure of

PUBLIC

II. SOUNDEXCHANGE SHOULD BE COMPELLED TO PRODUCE DOCUMENTS FROM THE LABELS' IN-HOUSE PROMOTION DEPARTMENTS THAT ARE RESPONSIVE TO RFP NOS. 14, 15, 16, 28, 29, 49, 56, 57, AND 58

There is no dispute that documents regarding the promotional effect of webcasting (including simulcasting) services — that is, the extent to which these services increase sales and other revenues — are directly related to SoundExchange's pre-filed testimony. SoundExchange concedes that point. *See* Opp. at 9-10. SoundExchange simply refuses to search the files of the major record labels' promotion departments — or even of the 10 specific individuals that iHeartMedia has identified who oversee promotion for the various major record labels. Because those individuals are directly responsible for both the extent and success of promotional efforts, they are likely to have the best sense of the promotional value of additional performances on non-interactive services, including simulcast services.

SoundExchange never explains why it would be unduly burdensome to search the files of the limited set of ten people who oversee promotion for the various record labels: Monte Lipman (UMG), Greg Thompson (UMG), Charlie Walk (UMG),¹² Joel Klaiman (Columbia Records/Sony), Lee Leipsner (Columbia Records/Sony), Joe Riccitelli (RCA Records/Sony), Mike Easterlin (Warner), Andrea Ganis (Atlantic Records/Warner), Peter Gray (Warner), and Julie Greenwald (Warner). iHeartMedia identified these key individuals during the parties' meet-and-confer discussions and also made clear in its motion to compel that, at a minimum, SoundExchange should be compelled to produce responsive documents from those particular

the deal, as well as a marathon negotiating session that Mr. Wilcox did not attend (and that, not coincidentally, was extremely productive). *See* Email from C. Foster to R. Wiesenthal, J. Glass, and V. Lockhart (Aug. 4, 2013) (attached as Ex. J). SoundExchange has given no valid reason for such a limited review. Its supposed inconvenience in having to search more broadly is not a valid basis for refusing to produce relevant evidence.

¹² SoundExchange has agreed to produce Mr. Walk for deposition on December 17, making it imperative that iHeartMedia and the other Services have his documents in advance of that deposition.

PUBLIC

custodians' files.¹³ Yet SoundExchange's opposition ignores that argument and suggested compromise entirely.

None of SoundExchange's objections justifies its refusal to search the files of these 10 key individuals. Indeed, SoundExchange's opposition is notably silent about each of these people, even though iHeartMedia identified them as the proper custodians to search in its November 11, 2014 letter objecting to SoundExchange's document production; during the November 12, 2014 meet-and-confer telephone call; and in its motion to compel. *See* Mot. at 7-8, 14-15 & Ex. A at 2.

SoundExchange asserts (at 18) that searching the files of the labels' promotion departments would be "fruitless," as these departments purportedly focus only on promotion on terrestrial radio and do not conduct studies on the promotional effect of webcasting services. SoundExchange thus ignores that promotion on terrestrial radio carries over to simulcast services. But in all events, SoundExchange notably does not claim that the specific individuals who have overall responsibility for promotion at the record labels have no documents regarding promotion on webcasting services, including services that simulcast terrestrial radio broadcasts. Nor could it. In fact, SoundExchange has recently agreed to produce one of those individuals — Charlie Walk, Executive Vice President of Republic Records, a division of Universal Music Group — for a deposition on December 17. The agreement to produce Mr. Walk for a deposition confirms that he — and his contemporaries at the other labels — have responsive information and highlights the need for a prompt ruling on this motion, so that the Services will have the chance to review his documents before the deposition.

¹³ *See* Mot. at 15 (arguing that SoundExchange should be compelled "at a bare minimum, [to search] the files of the key personnel who oversee [the labels' promotion] departments," citing to the earlier list of those individuals).

PUBLIC

The Judges should compel SoundExchange to search the files of the ten individuals who oversee promotion at the record labels, and should be required to produce responsive documents in Mr. Walk's files by December 10. SoundExchange should not be permitted to exclude documents that address promotion on terrestrial radio, as such promotion also extends to performances on simulcasts of those terrestrial radio broadcasts. Furthermore, SoundExchange's witnesses contend that, with regard to promotional effects, non-interactive services are different from, among other things, terrestrial radio.¹⁴ Documents addressing the promotional benefits from performances on, for example, terrestrial radio and simulcasting are directly related to SoundExchange's pre-filed testimony.

The parties' dispute about the promotional effects of non-interactive webcasting services is an issue at the center of this proceeding. Professor Rubinfeld's assertion that contracts with interactive webcasters provide the best benchmark for the non-interactive services at issue here depends significantly on his assertion that non-interactive services have no (or nearly no) promotional effect and are therefore the same as interactive services. Documents showing that the record labels themselves recognize the promotional value of performances on non-interactive services would directly undermine Professor Rubinfeld's analysis and invalidate his attempt to translate contracts for interactive services into a statutory rate for non-interactive services. The Judges do not need to decide these larger issues in the context of this motion to compel, but should not deny the Services access to critical documents to build a record for their case.

¹⁴ See Wheeler ¶¶ 41-42 (distinguishing non-interactive services from "getting [music] played on the radio," and asserting "that streaming music on one service, such as a webcaster, will not induce a consumer to buy a premium subscription on another service"); Kooker at 18-19 ("The concept of promotion is a misnomer when applied to streaming through statutory services. . . . Statutory services are unlike true promotional activities . . .").

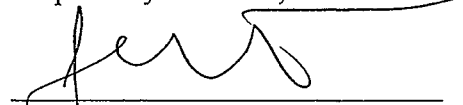
PUBLIC

CONCLUSION

For the foregoing reasons, the Judges should grant the motion to compel and require SoundExchange to produce the requested documents promptly, with documents from Mr. Walk's files produced by December 10.

Dated: November 26, 2014

Respectfully submitted,



John Thorne
Scott H. Angstreich
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, NW, Suite 400.
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
jthorne@khhte.com
sangstreich@khhte.com

Counsel for iHeartMedia, Inc.

CERTIFICATE OF SERVICE

I, Scott H. Angstreich, hereby certify that a copy of the foregoing PUBLIC - iHeartMedia's Reply in Support of Its Motion To Compel SoundExchange To Produce Documents has been served on this 26th day of November 2014 on the following persons:

<p>Kurt Hanson AccuRadio, LLC 65 E. Wacker Place, Suite 930 Chicago, IL 60601 kurt@accuradio.com</p> <p><i>AccuRadio, LLC</i></p>	<p>Jeffrey J. Jarmuth Law Offices of Jeffrey J. Jarmuth 34 E. Elm Street Chicago, IL 60611-1016 jeff.jarmuth@jarmuthlawoffices.com</p> <p><i>Counsel for AccuRadio, LLC</i></p>
<p>Catherine R. Gellis CGCounsel P.O. Box 2477 Sausalito, CA 94966 cathy@cgccounsel.com</p> <p><i>College Broadcasters, Inc.</i></p>	<p>David D. Golden Constantine Cannon LLP 1001 Pennsylvania Avenue NW, Suite 1300N Washington, DC 20004 dgolden@constantinecannon.com</p> <p><i>Counsel for College Broadcasters, Inc.</i></p>
<p>George D. Johnson GEO Music Group 23 Music Square East, Suite 204 Nashville, TN 37203 george@georgejohnson.com</p> <p><i>GEO Music Group</i></p>	<p>Kevin Blair Brian Gantman Educational Media Foundation 5700 West Oaks Boulevard Rocklin, CA 95765 kblair@kloveair1.com bgantman@kloveair1.com</p> <p><i>Educational Media Foundation</i></p>
<p>David Oxenford Wilkinson Barker Knauer, LLP 2300 N Street, NW, Suite 700 Washington, DC 20037 doxenford@wbklaw.com</p> <p><i>Counsel for Educational Media Foundation and National Association of Broadcasters</i></p>	

PUBLIC

<p>William Malone 40 Cobbler's Green 205 Main Street New Canaan, CT 06840-5636 malone@ieee.org</p> <p><i>Harvard Radio Broadcasting Co., Inc.</i></p>	<p>William Malone Intercollegiate Broadcasting System, Inc. 40 Cobbler's Green 205 Main Street New Canaan, CT 06840-5636 malone@ieee.org</p> <p><i>Intercollegiate Broadcasting System, Inc.</i></p>
<p>Frederick J. Kass Intercollegiate Broadcasting System, Inc. 367 Windsor Highway New Windsor, NY 12553-7900 ibs@ibsradio.org ibshq@aol.com</p> <p><i>Intercollegiate Broadcasting System, Inc.</i></p>	<p>Jane Mago, Esq. Suzanne Head National Association of Broadcasters 1771 N Street, NW Washington, DC 20036 jmago@nab.org shead@nab.org</p> <p><i>National Association of Broadcasters</i></p>
<p>Bruce G. Joseph Karyn K. Ablin Michael L. Sturm Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 bjoseph@wileyrein.com kablin@wileyrein.com msturm@wileyrein.com</p> <p><i>Counsel for National Association of Broadcasters</i></p>	<p>Gregory A. Lewis National Public Radio, Inc. 1111 North Capitol Street, NE Washington, DC 20002 glewis@npr.org</p> <p><i>National Public Radio, Inc.</i></p>
<p>Kenneth L. Steinthal Joseph R. Wetzel King & Spalding LLP 101 Second Street, Suite 2300 San Francisco, CA 94105 ksteinthal@kslaw.com jwetzel@kslaw.com</p> <p><i>Counsel for National Public Radio, Inc.</i></p>	<p>Ethan Davis King & Spalding LLP 1700 Pennsylvania Avenue, NW Suite 200 Washington, DC 20006 edavis@kslaw.com</p> <p><i>Counsel for National Public Radio, Inc.</i></p>

PUBLIC

<p>Russ Hauth, Executive Director Harv Hendrickson, Chairman National Religious Broadcasters Noncommercial Music License Committee 3003 Snelling Avenue North Saint Paul, MN 55113 russh@salem.cc hphendrickson@unwsp.edu</p> <p><i>National Religious Broadcasters Noncommercial Music License Committee</i></p>	<p>Karyn K. Ablin Jennifer L. Elgin Wiley Rein LLP 1776 K St. NW Washington, DC 20006 kablin@wileyrein.com jelgin@wileyrein.com</p> <p><i>Counsel for National Religious Broadcasters Noncommercial Music License Committee</i></p>
<p>Christopher Harrison Pandora Media, Inc. 2101 Webster Street, Suite 1650 Oakland, CA 94612 charrison@pandora.com</p> <p><i>Pandora Media, Inc.</i></p>	<p>R. Bruce Rich Todd D. Larson Sabrina A. Perelman Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153 r.bruce.rich@weil.com todd.larson@weil.com sabrina.perelman@weil.com</p> <p><i>Counsel for Pandora Media, Inc.</i></p>
<p>Gary R. Greenstein Wilson Sonsini Goodrich & Rosati 1700 K Street, NW, 5th Floor Washington, DC 20006 ggreenstein@wsgr.com</p> <p><i>Counsel for Pandora Media, Inc.</i></p>	<p>Jacob B. Ebin Akin Gump Strauss Hauer & Feld LLP One Bryant Park Bank of America Tower New York, NY 10036-6745 jebin@akingump.com</p> <p><i>Counsel for Pandora Media, Inc.</i></p>
<p>Cynthia Greer Sirius XM Radio Inc. 1500 Eckington Pl. NE Washington, DC 20002 cynthia.greer@siriusxm.com</p> <p><i>Sirius XM Radio Inc.</i></p>	<p>Patrick Donnelly Sirius XM Radio Inc. 1221 Avenue of the Americas 36th Floor New York, NY 10020 patrick.donnelly@siriusxm.com</p> <p><i>Sirius XM Radio Inc.</i></p>

PUBLIC

<p>Paul Fakler Arent Fox LLP 1675 Broadway New York, NY 10019 paul.fakler@arentfox.com</p> <p><i>Counsel for Sirius XM Radio Inc.</i></p>	<p>Martin F. Cunniff Jackson D. Toof Arent Fox LLP 1717 K Street, NW Washington, DC 20006 martin.cunniff@arentfox.com jackson.toof@arentfox.com</p> <p><i>Counsel for Sirius XM Radio Inc.</i></p>
<p>C. Colin Rushing Bradley E. Prendergast SoundExchange, Inc. 733 10th Street, NW, 10th Floor Washington, DC 20001 crushing@soundexchange.com bprendergast@soundexchange.com</p> <p><i>SoundExchange, Inc.</i></p>	<p>Glenn D. Pomerantz Kelly M. Klaus Anjan Choudhury Melinda E. LeMoine Kuruvilla J. Olasa Jonathan Blavin Rose Leda Ehler Jennifer L. Bryant Munger, Tolles & Olson LLP 355 S. Grand Avenue, 35th Floor Los Angeles, CA 90071-1560 Glenn.Pomerantz@mto.com Kelly.Klaus@mto.com Anjan.Choudhury@mto.com Melinda.LeMoine@mto.com Kuruvill.Olasa@mto.com Jonathan.Blavin@mto.com Rose.Ehler@mto.com Jennifer.Bryant@mto.com</p> <p><i>Counsel for SoundExchange, Inc.</i></p>

/s/ Scott H. Angstreich

Scott H. Angstreich
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, NW, Suite 400.
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
sangstreich@khhte.com

Counsel for iHeartMedia, Inc.

Exhibit I

PUBLIC

Exhibit Restricted in Its Entirety

Exhibit J

PUBLIC

Exhibit Restricted in Its Entirety

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of)
)
)

DETERMINATION OF ROYALTY RATES) Docket No. 14-CRB-0001-WR
FOR DIGITAL PERFORMANCE IN SOUND) (2016-2020)
RECORDINGS AND EPHEMERAL)
RECORDINGS (WEB IV))
_____)

DECLARATION AND CERTIFICATION OF SCOTT H. ANGSTREICH
ON BEHALF OF iHEARTMEDIA, INC.

1. I am one of the counsel for iHeartMedia, Inc. (“iHeartMedia”) in this proceeding, and I submit this Declaration in support of the restricted version of iHeartMedia’s Reply in Support of Its Motion To Compel SoundExchange To Produce Documents.

2. On October 10, 2014, the CRB adopted a Protective Order that limits the disclosure of materials and information marked “RESTRICTED” to outside counsel of record in this proceeding and certain other parties described in subsection IV.B of the Protective Order. *See* Protective Order (Oct. 10, 2014). The Protective Order defines “confidential” information that may be labeled as “RESTRICTED” as “information that is commercial or financial information that the Producing Party has reasonably determined in good faith would, if disclosed, either competitively disadvantage the Producing Party, provide a competitive advantage to another party or entity, or interfere with the ability of the Producing Party to obtain like information in the future.” *Id.* The Protective Order further requires that any party producing such confidential information must “deliver with all Restricted materials an affidavit or declaration . . . listing a description of all materials marked with the ‘Restricted’ stamp and the basis for the designation.” *Id.*

3. I submit this declaration describing the materials iHeartMedia has designated “RESTRICTED” and the basis for those designations, in compliance with Sections IV.A of the Protective Order. I have determined to the best of my knowledge, information and belief that the materials described below, which are being produced to outside counsel of record in this proceeding, contain confidential information.

4. The confidential information comprises or relates to (1) contracts, contractual terms, and contract strategy that are proprietary, not available to the public, competitively sensitive, and often subject to express confidentiality provisions with third parties; (2) financial projections, financial data, and business strategy that are proprietary, not available to the public, and commercially sensitive; and (3) material subject to third-party licenses or other limitations that restrict public disclosure.

5. If the confidential information were to become public, it would place iHeartMedia at a commercial and competitive disadvantage; unfairly advantage other parties to the detriment of iHeartMedia; and jeopardize iHeartMedia’s business interests. Information related to iHeartMedia’s confidential contracts or iHeartMedia’s relationships with content providers could be used by iHeartMedia’s competitors, or by other content providers, to formulate rival bids, bid up iHeartMedia payments, or otherwise unfairly jeopardize iHeartMedia’s commercial and competitive interests.

6. With respect to the financial information, I understand that iHeartMedia has not disclosed to the public or the investment community the financial information that it seeks to restrict here, including its internal financial projections and specific royalty payment information. Consequently, neither iHeartMedia’s competitors nor the investing public has been privy to that information, which iHeartMedia has treated as highly confidential and sensitive, and

has guarded closely. In addition, when iHeartMedia does disclose information about its finances to the market as required by law, iHeartMedia provides accompanying analysis and commentary that contextualizes disclosures by its officers. The information that iHeartMedia seeks to restrict by designating it confidential is not intended for public release or prepared with that audience in mind, and therefore was not accompanied by the type of detailed explanation and context that usually accompanies such disclosures by a company officer. Moreover, the materials include information that has not been approved by iHeartMedia's Board of Directors, as such sensitive disclosures usually are, and is not accompanied by the disclaimers that usually accompany such disclosures. iHeartMedia could experience negative market repercussions and competitive disadvantage were this confidential financial information released publicly without proper context or explanation.

7. The contractual, commercial and financial information described above must be treated as restricted confidential information in order to prevent business and competitive harm that would result from the disclosure of such information.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that the foregoing is true and correct.

November 26, 2014

Respectfully submitted,

/s/ Scott H. Angstreich

Scott H. Angstreich (D.C. Bar No. 471085)
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, NW, Suite 400
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
sangstreich@khhte.com

Counsel for iHeartMedia, Inc.

Glenn D. Pomerantz
Kelly M. Klaus
Anjan Choudhury
Melinda E. LeMoine
Kuruvilla J. Olasa
Jonathan Blavin
Rose Leda Ehler
Jennifer L. Bryant
Munger, Tolles & Olson LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560
Glenn.Pomerantz@mto.com
Kelly.Klaus@mto.com
Anjan.Choudhury@mto.com
Melinda.LeMoine@mto.com
Kuruvill.Olasa@mto.com
Jonathan.Blavin@mto.com
Rose.Ehler@mto.com
Jennifer.Bryant@mto.com

Counsel for SoundExchange, Inc.

/s/ Scott H. Angstreich

Scott H. Angstreich
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, NW, Suite 400
Washington, DC 20036
sangstreich@khhte.com
Tel: 202-326-7900
Fax: 202-326-7999

Counsel for iHeartMedia, Inc.

Karyn K. Ablin
Jennifer L. Elgin
Wiley Rein LLP
1776 K St. NW
Washington, DC 20006
kablin@wileyrein.com
jelgin@wileyrein.com

*Counsel for National Religious Broadcasters
Noncommercial Music License Committee*

Gary R. Greenstein
Wilson Sonsini Goodrich & Rosati
1700 K Street, NW, 5th Floor
Washington, DC 20006
ggreenstein@wsgr.com

Counsel for Pandora Media, Inc.

Paul Fakler
Arent Fox LLP
1675 Broadway
New York, NY 10019
paul.fakler@arentfox.com

Counsel for Sirius XM Radio Inc.

R. Bruce Rich
Todd D. Larson
Sabrina A. Perelman
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
r.bruce.rich@weil.com
todd.larson@weil.com
sabrina.perelman@weil.com

Counsel for Pandora Media, Inc.

Jacob B. Ebin
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
Bank of America Tower
New York, NY 10036-6745
jebin@akingump.com

Counsel for Pandora Media, Inc.

Martin F. Cunniff
Jackson D. Toof
Arent Fox LLP
1717 K Street, NW
Washington, DC 20006
martin.cunniff@arentfox.com
jackson.toof@arentfox.com

Counsel for Sirius XM Radio Inc.